

(b) As used in paragraph (a) of this section, the phrase:

(1) *Physical or mental impairment* means: (i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive, genitourinary; hemic and lymphatic; skin; and endocrine; or (ii) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term *physical or mental impairment* includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, and emotional illness.

(2) *Major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means:

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by a recipient as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Does not have a physical or mental impairment but is treated by a recipient as having such an impairment.

(c) *Qualified disabled person* means: (1) With respect to employment, a disabled person who, with reasonable accommodation, can perform essential functions of the job in question and (2) with respect to services, a disabled person who meets the essential eligibility

requirements for the receipt of such services.

(d) *Section 504* means section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112, as amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, Pub. L. 95-602 (29 U.S.C. 794).

DISCRIMINATORY PRACTICES

§4.121 General prohibitions against discrimination.

(a) No qualified disabled person, shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination under any program or activity that receives Federal financial assistance.

(b)(1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability:

(i) Deny a qualified disabled person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified disabled person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified disabled person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to disabled persons or to any class of disabled persons than is provided to others unless such action is necessary to provide qualified disabled persons with aid, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified disabled person by providing significant assistance to any agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the recipient's program or activity;

(vi) Deny a qualified disabled person the opportunity to participate as a

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member of planning or advisory boards; or

(vii) Otherwise limit a qualified disabled person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) A recipient may not deny a qualified disabled person the opportunity to participate in aid, benefits, or services that are not separate or different, despite the existence of permissibly separate or different aid, benefits, or services.

(3) A recipient may not directly or through contractual or other arrangements, utilize criteria or methods of administration:

(i) That have the effect of subjecting qualified disabled persons to discrimination on the basis of disability,

(ii) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program or activity with respect to disabled persons, or

(iii) That perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.

(4) A recipient may not, in determining the site or location of a facility, make selections:

(i) That have the effect of excluding disabled persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives Federal financial assistance or

(ii) That have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to disabled persons.

(c) The exclusion of nondisabled persons from aid, benefits, or services limited by Federal statute or Executive Order to disabled persons or the exclusion of a specific class of disabled persons from aid, benefits, or services limited by Federal statute or Executive Order to a different class of disabled persons is not prohibited by this subpart.

(d) Recipients shall administer programs or activities in the most integrated setting appropriate to the needs of qualified disabled persons.

(e) Recipients shall take appropriate steps to ensure that communications with their applicants, employees, and beneficiaries are available to persons with impaired vision and hearing.

[45 FR 14535, Mar. 6, 1980, as amended at 68 FR 51345, Aug. 26, 2003]

§ 4.122 General prohibitions against employment discrimination.

(a) No qualified disabled person shall, on the basis of disability, be subjected to discrimination in employment under any program or activity that receives Federal financial assistance.

(b) A recipient shall make all decisions concerning employment under any program or activity to which this subpart applies in a manner which ensures that discrimination on the basis of disability does not occur and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of disability.

(c) The prohibition against discrimination in employment applies to the following activities:

(1) Recruitment, advertising, and the processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities and selection for leaves of absence to pursue training;

(8) Employer sponsored activities, including those that are social or recreational; and

(9) Any other term, condition, or privilege of employment.